

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY MAY 14, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1971**

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**Introduced by Assembly Member Bocanegra**

February 19, 2014

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An act to add and repeal Article 3.3 (commencing with Section 20119) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to best value procurement.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1971, as amended, Bocanegra. School districts: best value procurement: pilot program.

The Local Agency Public Construction Act requires the governing board of any school district to let any contract for a public project, as defined, involving an expenditure of \$15,000 or more, to the lowest responsible bidder that gives security as the board requires, or else reject all bids.

This bill would establish a pilot program to authorize the Los Angeles Unified School District and 3 other unspecified school districts to use, before January 1, 2017, a best value procurement method for bid evaluation and selection for public projects that exceed \$1,000,000. The bill would establish various requirements applicable to the use of the best value procurement method under this authorization. The bill would require a school district that uses the best value procurement method to submit an interim and final report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim and final

report to the appropriate policy and fiscal committees of the Legislature on the use of the procurement method pursuant to the bill, in accordance with a specified schedule. These provisions would be repealed on January 1, 2020.

This bill would make legislative findings and declarations as to the necessity of a special statute for a limited number of school districts of varying sizes, including, but not limited to, the Los Angeles Unified School District.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 3.3 (commencing with Section 20119) is  
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract  
3 Code, to read:

4  
5 Article 3.3. School Districts—Best Value Procurement Pilot  
6 Program  
7

8 20119. (a) It is the intent of the Legislature to enable school  
9 districts to use cost-effective options for building and modernizing  
10 school facilities. The Legislature has recognized the merits of the  
11 best value procurement method process in the past by authorizing  
12 its use for projects undertaken by the University of California.

13 (b) The Legislature also finds and declares that school districts  
14 using the best value procurement method require a clear  
15 understanding of the roles and responsibilities of each participant  
16 in the best value process. As reflected in the University of  
17 California report to the Legislature, the benefits of a best value  
18 procurement method include a reduction in contract delays, change  
19 orders, and claims producing a savings in both contract costs and  
20 administration.

21 (c) It is the intent of the Legislature to provide an optional,  
22 alternative procedure for bidding and building school construction  
23 projects.

24 ~~(d) In addition, it is the intent of the Legislature that the best~~  
25 ~~value procurement method is not intended to change in any manner~~  
26 ~~any guideline, criteria, procedure, or requirement of the governing~~

1 ~~board of the school district to let any contract for a project to the~~  
2 ~~lowest responsible bidder or else reject all bids.~~

3 20119.1. As used in this article:

4 (a) “Best value” means a procurement process whereby the  
5 selected bidder may be selected on the basis of objective criteria  
6 for evaluating the qualifications of bidders with the resulting  
7 selection representing the best combination of price and  
8 qualifications.

9 (b) “Best value contract” means a competitively bid contract  
10 entered into pursuant to the provisions of this article.

11 (c) “Best value contractor” means a properly licensed person,  
12 firm, or corporation that submits a bid for, ~~or~~ *and* is awarded, a  
13 best value contract.

14 (d) “Demonstrated management competency” means the  
15 experience, competency, capability, and capacity of the proposed  
16 management staffing to complete projects of similar size, scope,  
17 or complexity.

18 (e) “Financial condition” means the financial resources needed  
19 to perform the contract. The criteria used to evaluate a bidder’s  
20 financial condition shall include, at a minimum, capacity to obtain  
21 all required payment bonds, and required insurance.

22 (f) “Labor compliance” means the ability to comply with, and  
23 past performance with, contract and statutory requirements for the  
24 payment of wages and qualifications of the workforce. The criteria  
25 used to evaluate a bidder’s labor compliance shall include, at a  
26 minimum, the bidder’s ability to comply with the apprenticeship  
27 requirements of the California Apprenticeship Council and the  
28 Department of Industrial Relations, its past conformance with such  
29 requirements, and its past conformance with requirements to pay  
30 prevailing wages on public works projects.

31 (g) “Project” has the same meaning as “public project” as  
32 defined in subdivision (c) of Section 22002.

33 (h) “Qualifications” means financial condition, relevant  
34 experience, demonstrated management competency, labor  
35 compliance, *skilled and trained workforce*, the safety record of  
36 the bidder, and ~~to the extent relevant, the preceding qualifications~~  
37 ~~as they pertain to all subcontractors proposed to be used by the~~  
38 ~~bidder for designated portions of the work. if required by the~~  
39 *bidding document, some or all of the preceding qualifications as*

1 *they pertain to subcontractors proposed to be used by the bidder*  
2 *for designated portions of the work.*

3 (i) “Relevant experience” means the experience, competency,  
4 capability, and capacity to complete projects of similar size, scope,  
5 or complexity.

6 (j) “Safety record” shall be deemed “acceptable” if its experience  
7 modification rate for the most recent three-year period is an average  
8 of 1.00 or less, and its average total recordable injury or illness  
9 rate and average lost work rate for the most recent three-year period  
10 do not exceed the applicable statistical standards for its business  
11 category, or if the bidder is a party to an alternative dispute  
12 resolution system as provided for in Section 3201.5 of the Labor  
13 Code. ~~If the experience modification rate for the most recent~~  
14 ~~three-year period is or was 1.00 or higher, a bidder may attach a~~  
15 ~~letter of explanation that the school district may review and take~~  
16 ~~into consideration when evaluating the bidder’s acceptable safety~~  
17 ~~record.~~

18 (k) (1) “Skilled and trained workforce” means a workforce that  
19 meets both of the following criteria, as applicable:

20 (A) All the workers are either registered apprentices or skilled  
21 journeypersons.

22 ~~(B) (i) As of January 1, 2015, at least 30 percent of the skilled~~  
23 ~~journeypersons are graduates of an apprenticeship program for the~~  
24 ~~applicable occupation that was either approved by the Chief of the~~  
25 ~~Division of Apprenticeship Standards pursuant to Section 3075 of~~  
26 ~~the Labor Code or located outside California and approved for~~  
27 ~~federal purposes pursuant to the apprenticeship regulations adopted~~  
28 ~~by the federal Secretary of Labor.~~

29 (ii)

30 ~~(B) (i)~~ As of January 1, ~~2016, 2015~~, at least 45 percent of the  
31 skilled journeypersons are graduates of an apprenticeship program  
32 for the applicable occupation that was either approved by the Chief  
33 of the Division of Apprenticeship Standards pursuant to Section  
34 3075 of the Labor Code or located outside California and approved  
35 for federal purposes pursuant to the apprenticeship regulations  
36 adopted by the federal Secretary of Labor.

37 ~~(iii)~~

38 ~~(ii)~~ As of January 1, ~~2017, 2016~~, at least 60 percent of the  
39 skilled journeypersons are graduates of an apprenticeship program  
40 for the applicable occupation that was either approved by the Chief

1 of the Division of Apprenticeship Standards pursuant to Section  
2 3075 of the Labor Code or located outside California and approved  
3 for federal purposes pursuant to the apprenticeship regulations  
4 adopted by the federal Secretary of Labor.

5 (2) A school district and a contractor are not required to track  
6 the percentage of journeypersons that are graduates of an  
7 apprenticeship program if the governing board of the school district  
8 has entered into a project labor agreement that will bind all  
9 contractors and subcontractors performing work on the project ~~and~~  
10 ~~complies with Section 2500.~~

11 (l) *“Skilled journeyperson” means a worker who meets either*  
12 *of the following criteria:*

13 (1) *The worker either graduated from an apprenticeship for the*  
14 *applicable occupation that was approved by the Chief of the*  
15 *Division of Apprenticeship Standards or adheres to the*  
16 *apprenticeship regulations adopted by the federal Secretary of*  
17 *Labor.*

18 (2) *The worker has at least as many hours of on-the-job*  
19 *experience in the applicable occupation that would be required*  
20 *to graduate from an apprenticeship program for the applicable*  
21 *occupation that is approved by the Chief of the Division of*  
22 *Apprenticeship Standards.*

23 20119.2. (a) This article provides for a pilot program for four  
24 school districts of different sizes to use best value procurement  
25 for projects over one million dollars (\$1,000,000).

26 (b) The governing boards of the following four school districts,  
27 for projects over one million dollars (\$1,000,000), before January  
28 1, 2017, may use the best value procurement method in accordance  
29 with this article:

30 (1) The Los Angeles Unified School District.

31 (2) ~~A small school district, \_\_\_\_.~~

32 (3) ~~A medium-sized school district, \_\_\_\_.~~

33 (4) ~~A large school district, \_\_\_\_.~~

34 (c) The governing board of any school district shall let any  
35 contract for a project pursuant to this article to the selected bidder  
36 that represents the best value or else reject all bids.

37 (d) The bidder may be selected on the basis of the best value to  
38 the governing board of the school district. In order to implement  
39 this method of selection, the governing board of the school district  
40 shall adopt and publish procedures and required guidelines for

1 evaluating the qualifications of the bidders that ensure the best  
2 value selections by the school district are conducted in a fair and  
3 impartial manner. These procedures and guidelines shall conform  
4 to this article and shall be mandatory for the school district when  
5 using best value selection.

6 (e) If the governing board of the school district deems it to be  
7 for the best interest of the school district, the governing board of  
8 the school district, on the refusal or failure of the ~~successful~~  
9 *selected* bidder for a project to execute a tendered contract, may  
10 award it to the second *lowest scored* bidder that represents the best  
11 value. If the second bidder fails or refuses to execute the contract,  
12 the governing board of the school district may likewise award it  
13 to the third *lowest scored* bidder.

14 (f) (1) *If the district elects to award a project pursuant to this*  
15 *section, retention proceeds withheld by the district from the*  
16 *selected best value contractor shall not exceed 5 percent if a*  
17 *performance and payment bond, issued by an admitted surety*  
18 *insurer, is required in the solicitation of bids.*

19 (2) *In a contract between the selected best value contractor and*  
20 *a subcontractor, and in a contract between a subcontractor and*  
21 *any subcontractor thereunder, the percentage of the retention*  
22 *proceeds withheld shall not exceed the percentage specified in the*  
23 *contract between the district and the selected best value contractor.*  
24 *If the selected best value contractor provides written notice to a*  
25 *subcontractor that, prior to or at the time the bid is requested, a*  
26 *bond may be required and the subcontractor subsequently is unable*  
27 *or refuses to furnish a bond to the selected best value contractor,*  
28 *then the selected best value contractor may withhold retention*  
29 *proceeds in excess of the percentage specified in the contract*  
30 *between the district and the selected best value contractor from*  
31 *any payment made by the selected best value contractor to the*  
32 *subcontractor.*

33 (g) *All subcontractors bidding on contracts pursuant to this*  
34 *chapter shall be afforded the protection contained in Chapter 4*  
35 *(commencing with Section 4100).*

36 20119.3. The governing board of the school district shall  
37 proceed in accordance with the following when awarding best  
38 value contracts under this article:

39 (a) ~~The governing board of the school district shall prepare a~~  
40 solicitation for bids and give notice pursuant to Section 20112.

1 (b) ~~The governing board of the school district shall establish a~~  
2 ~~procedure to prequalify bidders pursuant to Sections 20101 and~~  
3 ~~20111.6 as required by this code.~~ Information submitted by the  
4 bidder as part of the evaluation process shall not be open to public  
5 inspection to the extent that information is exempt from disclosure  
6 under the California Public Records Act (Chapter 3.5 (commencing  
7 with Section 6250) of Division 7 of Title 1 of the Government  
8 Code).

9 (c) Each solicitation for bids shall do all of the following:

10 (1) Invite prequalified bidders to submit sealed bids in the  
11 manner prescribed by this article.

12 (2) Include a section identifying and describing the following:

13 (A) Criteria that ~~the governing board of the school district will~~  
14 consider in evaluating the qualifications of the bidders.

15 (B) The methodology and rating or weighting system that will  
16 be used by ~~the governing board of the school district~~ in evaluating  
17 bids.

18 (C) The relative importance or weight assigned to the criteria  
19 for evaluating the qualifications of bidders identified in the request  
20 for bids.

21 (d) Final evaluation of ~~the best value contractor~~ *bidders* shall  
22 be done in a manner that prevents the identity of the bidders and  
23 the cost or price information from being revealed ~~to the committee~~  
24 *in* evaluating the qualifications of the bidders prior to completion  
25 ~~and announcement of that committee's decision. A meeting to~~  
26 ~~evaluate bids shall be open to the public.~~ *of qualification scoring.*

27 20119.4. Selection of the best value contractor shall be made  
28 as follows:

29 (a) (1) ~~The governing board of the school district shall evaluate~~  
30 the qualifications of the bidders based solely upon the criteria set  
31 forth in the solicitation documents, and shall assign a qualification  
32 score to each bid.

33 (2) Factors in determining a qualification score shall include,  
34 but are not limited to, ~~price~~, relevant experience, skilled and trained  
35 workforce, and acceptable safety record and shall be weighted in  
36 accordance with the following:

37 (A) At least 50 percent of the total weight or consideration shall  
38 be given to the following factors: ~~relevant expertise~~ *experience*,  
39 skilled and trained workforce, and acceptable safety record. ~~A~~  
40 ~~factor listed in this subparagraph shall not make up less than 15~~

1 ~~percent of the total weight or consideration. A factor listed above~~  
2 ~~shall make up at least 15 percent of the total weight or~~  
3 ~~consideration. Other factors may be included, in addition to~~  
4 ~~relevant experience, skilled and trained workforce, and acceptable~~  
5 ~~safety record, in determining a qualification score.~~

6 (B) No more than 50 percent of the total weight or consideration  
7 shall be given to price. A bidder that qualifies as a certified small  
8 business shall receive a 5-percent bid preference.

9 (b) ~~The award of the contract shall be made to the bidder whose~~  
10 ~~bid is determined, by the school district in writing, to be the best~~  
11 ~~value to the governing board of the school district. To determine~~  
12 ~~the best value contractor, the governing board of the school district~~  
13 ~~shall divide each bidder's price by its qualifications score. The~~  
14 ~~lowest resulting cost per quality point will represent the best value~~  
15 ~~bid. A preference of up to 5 percent shall be applied to the price~~  
16 ~~of a bid submitted by a small business, as defined by the school~~  
17 ~~district, before dividing the bidder's price by its qualification score.~~  
18 ~~The lowest resulting cost per quality point will represent the best~~  
19 ~~value bid. The award of the contract shall be made to the bidder~~  
20 ~~whose bid is determined, by the school district in writing, to be~~  
21 ~~the best value to the school district.~~

22 (c) ~~The governing board of the school district shall issue a~~  
23 ~~written decision of its contract award or else reject all bids.~~

24 (d) Upon issuance of a contract award, ~~the governing board of~~  
25 ~~the school district shall publicly announce its award identifying~~  
26 ~~the project, the project price, the best value contractor to which~~  
27 ~~the award is made, the project, the project price, and the selected~~  
28 ~~best value contractor's score based on the qualifications criteria~~  
29 ~~for evaluating the bidders listed in the request for bids. The notice~~  
30 ~~of award shall be made public and include the score of the selected~~  
31 ~~best value contractor in relation to all other responsive bidders and~~  
32 ~~their respective prices. The names of the remaining responsive~~  
33 ~~bidders may be concealed upon the request of the bidders, in which~~  
34 ~~case the governing board of the school district shall determine an~~  
35 ~~alternative method for publicly announcing its award of the~~  
36 ~~contract, as well as the prices, qualification scores, and resulting~~  
37 ~~costs per qualification point for all responsive bidders. The contract~~  
38 ~~file shall include documentation sufficient to support the decision~~  
39 ~~to award.~~



1 20119.5. (a) (1) A school district that uses the best value  
2 procurement method pursuant to this article shall submit to the  
3 Legislative Analyst the following reports completed by an  
4 independent third party:

5 (A) An interim report on or before July 1, 2017.

6 (B) A final report on or before January 1, 2019.

7 (2) A report shall include, but is not limited to, the following  
8 information:

9 (A) A description of the projects awarded using the best value  
10 procedures.

11 (B) The contract award amounts.

12 (C) The best value contractors awarded the projects.

13 (D) A description of any written protests concerning any aspect  
14 of the solicitation, bid, or award of the best value contracts,  
15 including the resolution of the protests.

16 (E) A description of the prequalification process.

17 (F) The criteria used to evaluate the bids, including the  
18 weighting of the criteria and an assessment of the effectiveness of  
19 the methodology.

20 (G) If a project awarded under this article has been completed,  
21 an assessment of the project performance, to include a summary  
22 of any delays or cost increases.

23 (b) (1) The Legislative Analyst shall submit an interim report  
24 to the appropriate policy and fiscal committees of the Legislature  
25 on the use of the best value procurement method by school districts  
26 on or before January 1, 2018, and a final report on or before July  
27 1, 2019. The report may include the information provided from  
28 the school district reports pursuant to subdivision (a) and any  
29 pertinent information that the Legislative Analyst deems instructive  
30 in evaluating whether the best value procurement method should  
31 be continued, expanded, or prohibited.

32 (2) The requirement for submitting a report imposed pursuant  
33 to this subdivision is inoperative on January 1, 2020, pursuant to  
34 Section 10231.5 of the Government Code.

35 20119.6. *Except as otherwise provided in this article, the best*  
36 *value procurement method is not intended to change any guideline,*  
37 *criterion, procedure, or requirement of the governing board of the*  
38 *school district to let a contract for a project to the lowest*  
39 *responsible bidder or else reject all bids.*

1     ~~20119.6.~~  
2     ~~20119.7.~~ This article shall remain in effect only until January  
3     1, 2020, and as of that date is repealed, unless a later enacted  
4     statute, that is enacted before January 1, 2020, deletes or extends  
5     that date.  
6     SEC. 2. The Legislature finds and declares that a special law  
7     is necessary and that a general law cannot be made applicable  
8     within the meaning of Section 16 of Article IV of the California  
9     Constitution because of the need to establish a pilot project for a  
10    limited number of school districts of varying sizes, including, but  
11    not limited to, the Los Angeles Unified School District, to  
12    determine the potential benefits and consequences of using best  
13    value procurement to facilitate infrastructure improvements and  
14    ease fiscal impacts.